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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,994	02/21/2002	Kyle Kafentzis	2128.KKAF.PT	1733

26986 7590 09/04/2003

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/081,994	KAFENTZIS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Drew E Becker	1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 July 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,9-11,18,19 and 26-31 is/are rejected.
- 7) ☒ Claim(s) 3-8,12-17 and 20-25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                     | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>0502</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it contains over 150 words. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 19 and 26-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 19 recites "a temperature of approximately \_\_\_\_\_ to \_\_\_\_\_ degrees". It is not clear what temperature range is being claimed.
5. Claims 26-27 recite "a roller-type grilling machine". It is not clear whether this is the same "roller-type grilling machine" referred to in parent claim 18.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 1, 18-19, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller [Pat. No. 4,516,485].

Miller teaches a method of cooking by providing a roller grill (Figure 1, #10), placing an elongate, tubular food in a sealed casing onto the roller grill (Figure 1, #12), rotating the food (column 1, line 31), and heating the food without any loss in freshness (column 1, line 29).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 9-11, and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller.

Miller teaches the above mentioned concepts as well as selling the food (column 1, line 9) and heating the food without any loss in freshness (column 1, line 29). Miller does not recite precooking and heating to 90-230°F. It would have been obvious to one of ordinary skill in the art to precook and heat the hotdog of Miller to 90-230°F since this would have been done during the course of normal experimentation, since hotdogs were commonly precooked, and since most consumers prefer their foods to at least be warm when eaten.

***Allowable Subject Matter***

10. Claims 3-8, 12-17, and 20-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 26-29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: the method of heating a packaged food product of dependent claims 3, 12, and 20 define over the prior art of record since the prior art does not teach, suggest, nor render obvious a pair of end caps, one on each end of the tube, with at least one being removable; the method of heating a packaged food product of dependent claims 7, 16, and 24 define over the prior art of record since the prior art does not teach, suggest, nor render obvious an outer housing around the tube with an annular space for receiving roller bearings; the method of heating a packaged food product of dependent claims 8, 17, and 25 define over the prior art of record since the prior art does not teach, suggest, nor render obvious a sealed bag within the tube with the food inside the bag; the method of heating a packaged food product of dependent claim 26 defines over the prior art of record since the prior art does not teach, suggest, nor render obvious configuring the sealed package to rest on the roller grill without rotating.

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13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kollar et al [Pat. No. 3,032,249], D'Amato et al [H1089], Van Leer [Pat. No. 3,433,652], Novak [Pat. No. 2,433,622], Berman [Pat. No. 6,261,611], Moffett et al [Pat. No. 2,633,284], Bard et al [Pat. No. 3,780,187], Hawley [Pat. No. 3,759,721], Parisi et al [Pat. No. 3,135,614], and Lindsey [Pat. No. 2,609,301] teach methods of cooking food in tubes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

A handwritten signature in black ink, appearing to read "Drew Becker", followed by a long horizontal line extending to the right.

Drew E Becker  
Examiner  
Art Unit 1761